

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 02-3470

United States of America,

Appellee,

v.

Jose Otero Figueroa, also known as
Robert Figueroa, also known as
Marcos Alvarado Mendoza, also
known as Pelonches, also known as
Pelon, also known as Adam Morales,

Appellant.

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Appeal from the United States
District Court for the
District of Nebraska.

[UNPUBLISHED]

Submitted: April 7, 2003
Filed: September 12, 2003

Before MELLOY, FAGG, and SMITH, Circuit Judges.

PER CURIAM.

Jose Otero Figueroa challenges the sentence the district court¹ imposed after he pleaded guilty to conspiracy to distribute methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and 846. At sentencing, over Figueroa's objection, the district

¹The Honorable Richard G. Kopf, Chief Judge, United States District Court for the District of Nebraska.

court increased his offense level by 2 levels under U.S.S.G. § 2D1.1(b)(1) for possessing a firearm during the conspiracy, and sentenced him to 292 months imprisonment and 5 years supervised release. On appeal, Figueroa challenges the 2-level enhancement.

After carefully reviewing the evidence presented by the government at sentencing, we conclude the district court did not clearly err in finding the government had shown by a preponderance of the evidence that Figueroa possessed a firearm during the charged conspiracy and that it was not clearly improbable the firearm was connected to the conspiracy. See United States v. Harris, 310 F.3d 1105, 1112 (8th Cir. 2002) (standard of review), cert. denied, 123 S. Ct. 2121 (2003). Accordingly, we affirm.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.